



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 58 of the Private Housing (Tenancies)(Scotland) Act 2016**

**Chamber Ref: FTS/HPC/PR/20/1302**

**Re: Property at Flat 23 Mason Terrace, Lancaster Gate, Lossiemouth, IV31 6NB (“the Property”)**

**Parties:**

**Mr Steven Kay, Flat 14 Mason Terrace, Lancaster Gate, Lossiemouth, IV31 6NB (“the Applicant”)**

**Mr Elliot Oldfield, 113 Forbeshill, Forres, Moray, IV36 1JJ (“the Respondent”)**

**Tribunal Members:**

**Gabrielle Miller (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application has to be refused.**

**Background**

1. An application was received on 15<sup>th</sup> June 2020 and signed 25<sup>th</sup> May 2020. The application was submitted under Rule 110 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on section 58 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) by the Applicant asserting that he had his tenancy wrongfully terminated.

## The Case Management Discussion

2. A CMD was held on 20<sup>th</sup> October 2020 by teleconferencing. The Applicant was represented himself. The Respondent also represented himself.
3. The facts of the case were discussed. The Applicant stated that the Respondent had served a Notice to Leave on 5<sup>th</sup> March 2020. This had been under the ground that the Respondent intended to live in the Property. The Applicant took the Notice to Leave to Moray Council who informed him that the Notice to Leave was not valid as it had given him 28 days notice instead of 84 days notice.
4. On the 16<sup>th</sup> March 2020 a further Notice to Leave was issued upon the Applicant. This was based on the ground that the Applicant had breached the terms of the tenancy. This was namely that the Property was not kept in a good condition. Mrs Foreman, who had previously resided at the Property with the Applicant, took this notice to Moray Council. The Applicant inform the Tribunal that Mrs Foreman was told by Moray Council that the notice was valid this time. She was also informed that neither she nor the Applicant required to leave until such time as there was an order for eviction granted by a tribunal. This process was explained to Mrs Foreman. The Applicant told the Tribunal that he understood that he did not require to leave the Property until such time as a tribunal had made a decision on the matter. He also knew that he could submit a defence to a tribunal explaining that he disputed that the property had not been kept in a good condition and that this may mean that the eviction order might not be granted.
5. The Applicant had been offered a neighbour's flat as the neighbour received accommodation through his work. Initially the Applicant had refused this as he was aware that he could make a defence against a case and may not need to leave the Property. However, after a fraught phone call with the Respondent, the Applicant decided to accept this neighbour's offer and moved into another flat in the block. Mrs Foreman chose to leave the Property before the Applicant left the Property on 1<sup>st</sup> May 2020.
6. The Respondent told the Tribunal that he had intended to live in the Property when he served the Notice to Leave. He had just returned from living abroad on 22<sup>nd</sup> February 2020. However, he had Crohn's disease and subsequently thought it better that he live with his parents for a while for medical reasons. When the Applicant had moved out the Respondent required to rent the Property again to obtain an income. He disputes that there had been a wrongful-termination. He had instructed tradesmen to address issues that required to be repaired once the Applicant had left. This included requiring to fit a new bathroom amongst other jobs that needed done. The Applicant disputed this point. The Respondent did not raise an application for eviction through the Housing and Property Chamber.

7. The Tribunal looked to section 58(3) of the Private (Tenancies)(Scotland) Act 2016 which states:

“The Tribunal may make a wrongful-termination order if it finds that the former tenant was misled into ceasing to occupy the let property by the person who was the landlord under the tenancy immediately before it was brought to an end.”

8. It was put to the Applicant that he had known that he was able to continue to stay in the Property until such time as there was an order granted by a tribunal. The would be only after a tribunal hearing was heard where he could submit his defence. It was also put to the Applicant that he was aware that if his defence was accepted then he would not need to leave the Property. The Applicant accepted that this was the case. The Applicant had stated in his application form that he had been fed up with the situation and left because of that. The Tribunal queried whether the Applicant had in fact been misled or had left of his own volition. The Applicant confirmed that he knew that he did not need to leave as he could have put in a defence to any tribunal eviction case which may have meant that he did not need to leave the Property. The Applicant accepted that he was not misled into leaving the property. He had chosen to leave. The Tribunal noted this and decided that the Applicant had not been subject to a wrongful-termination as he had left the Property through is own volition and not as a result of being misled. The Application was refused.

#### Findings and reason for decision

9. A Private Rented Tenancy Agreement commenced on 26<sup>th</sup> February 2019.
10. The Respondent served a Notice to Leave upon the Applicant on 5<sup>th</sup> March 2020. This Notice to leave was faulty as it did not allow sufficient notice. This Notice to Leave was based on the Respondent requiring the Property to live in it himself.
11. On 16<sup>th</sup> March 2020 a valid Notice to Leave was served upon the Applicant. This was based on a breach of the tenancy agreement, namely that the Property was not kept in good condition.
12. The Applicant left the Property on 1<sup>st</sup> May 2020 and moved into a flat in the same block.
13. The Applicant had received advice on both notices. The Applicant was aware of the first not being valid and the second being valid. The Applicant was aware of his rights to attend a tribunal and state a defence. The Applicant was aware that he could not be removed from the Property unless an order was granted by a tribunal.

14. The Respondent did not lodge an application for eviction proceedings with the Housing and Property Chamber.

### Decision

15. The application was refused. A Notice to Leave had been issued by the Respondent on 16<sup>th</sup> March 2020. This had a 28 day notice period. The Applicant had left the Property after the notice period had expired. The Applicant's partner had taken advice on the notice from Moray Council. Moray Council had advised that the notice was correct but that the Applicant and his partner did not require to leave the Property until such time as the matter proceeded to a tribunal hearing and that the tribunal had granted an order for his eviction. The Applicant was aware of this advice and that he could state a defence against the ground of the notice which referred to the condition of the Property. He was aware that if a defence had been accepted by a tribunal that the order for his eviction might not have been granted. He was aware that at the time he left the Property he did not require to do so. He left as his relationship with the Respondent was fraught. The Applicant was not misled. As such section 58 of the 2016 Act does not apply in this case and thus the application is refused.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Gabrielle Miller

20<sup>th</sup> October 2020

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Legal Member/Chair

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Date